

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Criminal Action

No. 13-270

ATIBA WARREN,

Defendant.

Transcript of SENTENCING HEARING proceedings recorded on
September 12, 2016, in the United States District Court,
700 Grant Street, Pittsburgh, Pennsylvania, before
The Hon. Mark R. Hornak, United States District Judge

APPEARANCES:

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P R O C E E D I N G S

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(9:34 a.m.; in open court, Defendant present:)

THE COURT: We're here this morning in the case of the United States of America versus Mr. Atiba Warren pending on the docket at 13-cr-270. Will counsel for the United States please enter her appearance?

MS. KING: Good morning, Your Honor. Katherine King for the United States.

THE COURT: Good morning, Miss King. Will counsel for Mr. Warren please enter his appearance?

MR. SCHORR: Damien Schorr for Mr. Warren.

THE COURT: Good to see you also, Mr. Schorr. Ms. King, Mr. Schorr, is it all right if we handle today's proceeding with everyone keeping their seats at counsel table? Does that work for you, Miss King?

MS. KING: Yes, Your Honor.

THE COURT: Thank you, Miss King. Does that work for you, Mr. Schorr?

MR. SCHORR: Sure.

THE COURT: Mr. Warren, if you could slide your microphone in that way, we can be sure we hear you. Mr. Babik, would you please administer an oath to Mr. Warren? You may keep your seat, sir.

(The Defendant was duly sworn.)

1 MR. BABIK: Please state your name for the record.

2 THE DEFENDANT: Atiba Warren.

3 THE COURT: Good morning, Mr. Warren.

4 THE DEFENDANT: Good morning, Your Honor.

5 THE COURT: Mr. Warren, as we get started here
6 today, there are a few preliminary matters I would like to go
7 over with you, sir. First, just to confirm for the record,
8 you are represented by a lawyer. That lawyer is Mr. Damien
9 Schorr, and he is seated right next to you at that table,
10 sir; correct?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: Okay. And Mr. Warren, you understand
13 that we're here in Federal court today so that the Court
14 could set the sentence in your case?

15 THE DEFENDANT: I understand.

16 THE COURT: And Mr. Warren, have you had enough
17 time and opportunity to talk about today's hearing in your
18 case with your lawyer, Mr. Schorr?

19 THE DEFENDANT: I have.

20 THE COURT: And Mr. Warren, are you satisfied with
21 the job that Mr. Schorr has done for you as your lawyer?

22 THE DEFENDANT: Yes. He's done an excellent job,
23 sir.

24 THE COURT: Thank you, Mr. Warren. Mr. Warren, let
25 me ask you this, sir. In the last 24 hours have you taken or

1 used any prescribed or nonprescribed medicine or drugs?

2 THE DEFENDANT: No. Not that's going to affect me,
3 no.

4 THE COURT: Have you taken anything at all, sir?

5 THE DEFENDANT: Anti-inflammatories.

6 THE COURT: That's because the doctors prescribed
7 that for you?

8 THE DEFENDANT: Yes.

9 THE COURT: And it works for you?

10 THE DEFENDANT: Yes. My hips, my hip problem.

11 THE COURT: And let me ask you this, Mr. Warren.
12 In the time that you've been taking that anti-inflammatory,
13 have you ever noticed that it gets in the way of you
14 understanding what's going on around you?

15 THE DEFENDANT: No, sir.

16 THE COURT: You're good to go today, sir?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: And other than your hip situation that
19 you've talked about, have you recently been under the care of
20 any type of doctor or health care person for anything else?

21 THE DEFENDANT: No, Your Honor.

22 THE COURT: Okay. Thank you, Mr. Warren.

23 THE DEFENDANT: You're welcome, Your Honor.

24 THE COURT: Mr. Schorr, based on all the
25 information available to you, do you have any doubt as to

1 Mr. Warren's competence to participate in today's hearing?

2 MR. SCHORR: No, sir.

3 THE COURT: And Miss King, based on all the
4 information available to you, do you have any doubts as to
5 Mr. Warren's competence to participate in today's hearing?

6 MS. KING: No, Your Honor.

7 THE COURT: Mr. Warren, based on your answers to my
8 questions, my observations here in open court, the
9 representations of your lawyer, Mr. Schorr, and Miss King's,
10 the lawyer for the United States, I find that you are
11 competent to participate in today's hearing.

12 Counsel, I'm confident based on the filings that
13 have been made in this case that all counsel are familiar
14 with each and every one of the relevant matters that are on
15 the docket in this case. I would highlight a number of them,
16 however, for the record.

17 Back on October 30, 2015, a jury returned a
18 unanimous verdict after a trial in open court in which
19 Mr. Warren was represented by counsel, finding him guilty of
20 Count 1 of the indictment in this proceeding charging
21 possession of a firearm by a convicted felon.

22 Thereafter, the probation office prepared in the
23 normal course a presentence report and made it available to
24 the Court and counsel on January 29, 2016. I would note that
25 present in the courtroom seated in the jury box is United

1 States Probation Officer Andrew Waszyn.

2 Thereafter, the probation office made available and
3 circulated in a similar fashion the addendum to the
4 presentence report on February 16, 2016.

5 Thereafter, the Defendant has filed a number of
6 position statements, memoranda and other materials relevant
7 to sentencing on February 5, May 11, July 22, July 26,
8 July 27, August 22, August 23, August 26 and August 29, 2016.

9 The United States filed similar materials on
10 February 4, February 12, May 2, July 22, August 14, August 23
11 and August 26 of 2016.

12 Thereafter, the Court filed tentative findings on
13 August 24, 2016, and thereafter, based on matters raised at
14 the initial sentencing hearing in this court and the
15 supplemental memoranda filed by counsel, vacated those
16 tentative findings and issued amended tentative findings on
17 September 1, 2016.

18 Miss King, have you reviewed each of the documents
19 to which I've referred?

20 MS. KING: Yes, Your Honor.

21 THE COURT: And Mr. Schorr, have you done likewise
22 and also reviewed them with your client, Mr. Warren?

23 MR. SCHORR: Yes, sir.

24 THE COURT: Mr. Warren, have you reviewed each of
25 the documents to which I've just referred and, in particular,

1 the presentence report, the addendum to the presentence
2 report and each of the Court's tentative findings?

3 THE DEFENDANT: I have, Your Honor, yes.

4 THE COURT: Thank you, Mr. Warren.

5 THE DEFENDANT: You're welcome.

6 THE COURT: I would confirm for the record that the
7 sentencing guidelines have by decisions of our United States
8 Supreme Court been declared to be advisory to the Court.
9 That means, among other things, that the sentencing
10 guidelines themselves are no longer mandatory, and a
11 sentencing Court may not presume or take for granted that an
12 advisory guideline range or a particular guideline sentence
13 is reasonable in a specific case. Therefore, the guidelines
14 are not only not mandatory; they're not presumed to be
15 reasonable in a given case.

16 Miss King, are there any identifiable victims in
17 this case for whom notice of today's hearing was required to
18 be given; and, if so, has such notice been given?

19 MS. KING: There are no victims, Your Honor.

20 THE COURT: Thank you, Miss King.

21 I would confirm for the record that the Court's
22 reviewed the complete file in this case that includes the
23 presentence report, the addendum to the presentence report,
24 each and every position statement submitted by counsel for
25 the parties in the case, all of the letters regarding

1 sentencing that have been submitted to the Court, along with
2 the recommendation of the probation office.

3 I would confirm for the record that pursuant to
4 Federal Rule of Criminal Procedure, 32(e)(3), that
5 recommendation is not disclosed to counsel for the United
6 States, counsel for the Defendant or the Defendant. But I
7 would also confirm that in determining the sentence in this
8 case, the Court will not consider and has not considered any
9 factual or legal matter that has not been disclosed to the
10 Defendant and to all counsel.

11 Miss King, is the United States seeking or moving
12 for a formal departure, as that term is used under the
13 sentencing guidelines?

14 MS. KING: No, Your Honor.

15 THE COURT: And Mr. Schorr, is the Defendant moving
16 for or seeking a formal departure, as that term is used under
17 the sentencing guidelines?

18 MR. SCHORR: No, Your Honor.

19 THE COURT: Thank you, Miss King, and thank you,
20 Mr. Schorr.

21 Miss King, based on the Court's review of the
22 record, it appears based on the findings contained in the
23 presentence report and set forth in the Court's tentative
24 findings, by statute there is a mandatory minimum sentence of
25 imprisonment applicable in this case of 180 months or 15

1 years pursuant to Title 18 of the United States Code, Section
2 924(e). Is that your understanding?

3 MS. KING: Yes, Your Honor.

4 THE COURT: Mr. Schorr, do you have any different
5 understanding?

6 MR. SCHORR: No, Your Honor. But I do want to note
7 that in preparing for today I noted that a case before you,
8 Al-Akili I believe his name was, who was a career offender,
9 armed career criminal with a case similar to Mr. Warren's,
10 who got less than 15 years. I'm not quite sure how that
11 happened, but somehow it did.

12 I looked at the docket. A lot of the proceedings
13 are sealed. I couldn't get to them, but I do want to note
14 that from what I could view, the Third Circuit didn't mention
15 anything about the sentence being under the statutory
16 mandatory minimum at all on appeal.

17 THE COURT: Right. Mr. Al-Akili, as I recall,
18 appealed that sentence, and it was affirmed on appeal.

19 MR. SCHORR: Correct, but he got less than 180
20 months on the sentence, if I recall correctly.

21 THE COURT: I think your recollection is correct.

22 MR. SCHORR: So for whatever -- somehow you were
23 able to get him under 180 months. I don't know how it
24 happened. I just couldn't find that out.

25 But if you're inclined to go under 180 months for

1 Mr. Warren for the same reasons, for whatever reasons you
2 could find, I'm asking you to do so.

3 THE COURT: Understood, Mr. Schorr, and we'll make
4 sure you and Miss King and Mr. Warren have an opportunity to
5 tell the Court anything, anything at all that you think the
6 Court should be aware of prior to imposing sentence.

7 Miss King, does the United States have any
8 objections to any of the matters set forth in the presentence
9 report, the addendum or the Court's amended tentative
10 findings in this case?

11 MS. KING: No, Your Honor.

12 THE COURT: Thank you, Miss King. Mr. Schorr,
13 other than the matters that have been set forth and preserved
14 in the filings you made on Mr. Warren's behalf, does
15 Mr. Warren have any other objections to any of the matters
16 reported in the presentence report, the addendum or the
17 Court's amended tentative findings?

18 MR. SCHORR: I do want to place one objection on
19 the record, Your Honor. It really starts it looks to me on
20 page 8 of your amended tentative findings.

21 THE COURT: Let me flip to that, sir, so I have it
22 in front of me. Mr. Schorr, I'm good to go.

23 MR. SCHORR: In here you use the Wadlow case,
24 spelled W-a-d-l-o-w, from the Maryland courts. And I don't
25 believe Wadlow treats armed robbery and simple robbery as

1 separate offenses. I don't recall them saying that in that
2 decision. It's still robbery with the enhancement of a
3 dangerous or deadly weapon.

4 And the problem with that is that leaves you then
5 as you move on in your tentative findings to use the modified
6 categorical approach in analyzing Mr. Warren's conviction
7 there, and I object on that grounds also because it should
8 just be a -- it should just be categorical -- it's not a
9 divisible statute. It wasn't at the time of the offense.

10 It's not the same statute -- and I called this to
11 your attention at the last hearing we had -- that's in effect
12 now. Maryland has since amended that statute.

13 So I wanted to put that objection on the record for
14 purposes of appeal, that I disagree with how the Court's
15 reached its conclusion. I don't think it's a divisible
16 statute. I don't think armed robbery has ever been held to
17 be a separate offense by Maryland courts.

18 And while I respect what the Supreme Court has said
19 in the Mathis case, they did not address in there what they
20 also said in Johnson, that they are bound by State court
21 interpretations of what are the elements of the State crime.

22 And so Mathis doesn't give us any guidance in that
23 regard. And I want to preserve those objections for purposes
24 of appeal.

25 THE COURT: Mr. Schorr, as far as I'm concerned,

1 and I'm not -- I don't think it's this Court that has the
2 final say on that, but as far as I'm concerned, you've
3 preserved them with me.

4 MR. SCHORR: I understand that. My real concern is
5 I've seen in the past where the Government, when I file an
6 appeal brief, I've done it on fifty appeals, they say, well,
7 he didn't object enough. So I want to make sure I'm
8 objecting all the way to the bitter end.

9 THE COURT: And Mr. Schorr, you're not -- as far as
10 the Court's concerned, you're not duplicatively objecting.
11 And I think there's case law -- although I think the Molina
12 case from this past June identifies how the Supreme Court
13 views the obligation of the District Courts to correctly
14 calculate the advisory guidelines and the broad sweep of
15 review of that calculation. But there's no problem with the
16 Court with you placing that objection on the record again
17 this morning.

18 Miss King, if you'd like to say anything, you're
19 welcome to. You're not obligated to, but I'm happy to hear
20 from you regarding what Mr. Schorr's just said.

21 MS. KING: I don't have anything, Your Honor.

22 THE COURT: Mr. Schorr, I understand your
23 objection. It is one that has been made by you on
24 Mr. Warren's behalf in a number of fashions, in writing and
25 orally up until now.

1 I do believe Justice Kagan's decision in Mathis is
2 the latest word on what the Supreme Court considers and what
3 it directs the District Courts consider to be an element,
4 sometimes parallel to the affirmative use of those words by
5 the Courts of the state; but I think Justice Kagan, writing
6 for a majority of the Supreme Court in Mathis, was very
7 clear, and I tried to note that in the one footnote in the
8 tentative findings.

9 She did not liken it to an element. She didn't say
10 it was akin to an element. She didn't say it was like an
11 element. She said it's an element.

12 MR. SCHORR: I understand that. The other concern
13 would be that now the District Courts step into the State
14 court realm, and they're saying, no, we're going to define
15 what is an element of a Maryland crime, and that is --
16 Johnson says you can't do that. So I just want to make sure
17 I have that preserved.

18 THE COURT: You have, as far as I'm concerned,
19 preserved it, Mr. Schorr. For the reasons set forth in the
20 Court's amended tentative findings, I'll overrule the
21 objection. But I understand it, and I attempted to address
22 it in the Court's amended tentative findings. Anything else
23 along those lines, Mr. Schorr?

24 MR. SCHORR: No, Your Honor.

25 THE COURT: The Court will adopt the findings of

1 fact and other conclusions set forth in the presentence
2 report, the addendum, and in its amended tentative findings
3 that relate at all to sentencing in this case subject to any
4 necessity to amend or modify them based on matters that are
5 raised during the proceeding today.

6 At this point, Mr. Schorr, we'll hear from you on
7 behalf of Mr. Warren regarding any matters relative to
8 sentencing. When you tell me you're done, I'll then address
9 Mr. Warren personally and directly.

10 When I do that, Mr. Warren, that will be your
11 opportunity to tell the Court anything, literally anything at
12 all you would like me to know, including about your case,
13 your situation, you. But really, without limit, anything you
14 want me to be aware of or to know, that will be an
15 opportunity for you to tell me that.

16 When you're done, we'll turn the floor over to
17 Miss King, and we'll hear from Miss King on behalf of the
18 United States. And when that's done, we'll make sure that
19 both Miss King and Mr. Schorr have the final opportunity to
20 advise the Court of anything that they believe the Court
21 should know.

22 So with that, Mr. Schorr, the floor is yours.

23 MR. SCHORR: Thank you, Your Honor. Well, as it
24 stands here now, you have a choice of either sentencing
25 Mr. Warren to the mandatory minimum of 15 years or 180 months

1 or going into the guidelines sentence, which I believe starts
2 at 260 months --

3 THE COURT: Based on what I found in the amended
4 tentative findings, I believe it's 210 months for purposes of
5 this case.

6 MR. SCHORR: Well, under the parsimony provision of
7 the sentencing statute, 180 months is sufficient and no
8 greater than necessary. That's the bottom line that Congress
9 has said as far as this kind of crime is concerned.

10 And as far as Mr. Warren is concerned, when you
11 look at him, you've got a now 36-year-old man with bad health
12 problems with his hips, he's got diabetes, possibly some
13 mental health issues. And so he's not your run-of-the-mill
14 young gang banger who may come out and be young enough to get
15 in trouble again.

16 He's not going to be the same man when he comes out
17 of prison after 15 years than he is today going in. He's
18 going to be substantially older, more infirmed. We don't
19 know what kind of issues he's going to face with his health
20 moving forward.

21 He is diabetic. That complicates every other
22 health issue that somebody encounters. He needs more work
23 done on his hips. He's already had one replaced, and I
24 believe the other one is going bad also.

25 So when you consider all those factors, I think

1 that 180 months is appropriate. And not only that, the
2 nature of the offense here, he was not out on the street
3 brandishing a gun or engaging in illegal drug transactions.

4 To my knowledge, no contraband was found in his
5 house when the police searched it. They came into his house
6 pursuant to their investigating an incident that happened
7 outside, and my understanding is they saw Mr. Warren with a
8 gun at that time.

9 I can understand they go in for their own safety,
10 but it's not as if he was acting in a dangerous manner in
11 terms of endangering anybody else.

12 So this is not a man who was a threat to anybody at
13 the time of his arrest. And so to that end, 180 months,
14 which you must sentence him to at least, should -- there's no
15 reason to go above it. He has support from family and
16 friends. You saw several letters from his family and
17 friends.

18 And he has had a hard life growing up. If you
19 recall, he didn't have the best home life growing up. He's
20 had -- been in and out of -- on the streets as a young man,
21 but he's been trying to turn his life around.

22 So when you sit here and look at this man, I'm
23 asking you to sentence him to no more than 180 months because
24 I think that's sufficient but no greater than necessary,
25 given the nature of this case. And I'm done.

1 THE COURT: Thank you, Mr. Schorr.

2 Mr. Warren, I'll now go beyond you personally and
3 directly. This is your opportunity to tell me anything,
4 literally anything at all that you would like me to know or
5 be aware of, sir.

6 THE DEFENDANT: Okay. Can I confer with my counsel
7 real quick?

8 THE COURT: Absolutely.

9 (Brief pause.)

10 THE COURT: Mr. Warren?

11 THE DEFENDANT: Your Honor, I want to first of all
12 say to the Court it's been a rough couple years, you know. I
13 feel like I'm here for, you know, nothing, not for like --
14 this is probably overzealous police work.

15 I feel like they illegally searched the house.
16 That's why I took it to trial.

17 All my cases in the State, I did plead on the armed
18 robbery, and that was on the advice of counsel with the plea
19 condition that the armed robbery would be off my record. I
20 wasn't aware these robberies were in the record until I
21 caught the Federal piece.

22 All that's in the record for the Court to see that
23 this was a condition of my plea with the armed robbery. I
24 would have never pled out to the armed robberies if it had
25 not explicitly stated that they would be removed from my

1 record once the probation was completed.

2 I completed the probation. Somehow there was a
3 clerical error on behalf of Baltimore City, and I'm getting
4 punished for that right now.

5 I've been punished for my crimes that I paid my
6 debt to society for. I left Baltimore, which is a
7 substantially more violent and faster moving city than
8 Pittsburgh. I didn't leave Baltimore City to come to
9 Pittsburgh and pick up guns when I didn't pick up guns in
10 Baltimore.

11 I'm not a violent person. I have three kids that
12 depend on me, that need me, that I've been missing their
13 life, and I'm supportive of financially and emotionally when
14 I was home.

15 I told nobody to come to court because I don't -- I
16 have had family members pass away, and I don't want to bring
17 no more stress to the people through this time because they
18 know I didn't do anything wrong, and I feel like -- you know,
19 it's not justice being served.

20 But, you know, I feel like everything happens for a
21 reason. So I try to use this time and find a silver lining
22 in every cloud. And that's what I'm doing right now, trying
23 to better myself with programs, you know, reading books,
24 self-help books, business books. I was hurting when I had to
25 retire from plumbing because that's something I love.

1 You know, I made mistakes in my younger age. I'm
2 36 now, and 36 in Baltimore years makes me feel like I'm mid-
3 age because I have a lot of friends that died right next to
4 me with their brains on my shoulder. I watched my mother OD
5 when I was seven.

6 I'm not asking for pity. I'm asking for mercy from
7 Your Honor. Fifteen years is -- I got two bad hips. I might
8 not be alive in 15 years. I might not be alive in the next
9 three or four years. Who knows? That I can't say.

10 But I feel like this is for a gun, and you got
11 people that go to stores and buy guns and shoot people. I
12 didn't have -- I didn't touch a gun. It wasn't -- there was
13 no fingerprint. One word off of one officer out of twelve
14 officers that was at the scene.

15 I felt it was shabby police work at best. I feel
16 there was a crime committed five blocks away from where I was
17 standing. I was woke from my sleep, just had total hip
18 replacement.

19 I had surgery in August of 2012. I got out of the
20 hospital in September to the nursing home. I was walking
21 with a cane, crutches, and/or walker. This is impossible for
22 me to walk around with a gun. And I have enough brains --
23 last time I caught it, I was at a 143 IQ -- to have a gun
24 while you got twelve police officers outside, and I confessed
25 in the police car with audio and video? Where's the

1 confession at?

2 I mean I feel like I just got railroaded from the
3 jump, and you've been a fair and impartial -- you know, a
4 good Judge in my view from my first experience with Federal
5 court.

6 And I ask Your Honor, if there's any way that you
7 could sentence me under, and I'm the one that brought the
8 case to Mr. Schorr, because that's all I do. I work on my
9 case. I look over the computer. I see your rulings, and I
10 sense that you are a fair Judge.

11 I'm asking you if there's anything possible that
12 you could do to get me back to my family. I missed most of
13 my daughter's life. My son was just born. He's three years
14 old. I missed his whole life. I never had a chance to meet
15 him. I ask all this to -- I ask the mercy of the Court, Your
16 Honor.

17 I mean I'm at a loss of words because this is what
18 I'm stuck with. I'm curious why would the police be here
19 watching me get sentenced? This is like vindictive
20 prosecution.

21 I feel like I'm getting labeled because of the city
22 I was born in that I left. I made a conscious decision to
23 leave to come to Pittsburgh where my mother was originally
24 born and raised, to start fresh because I don't want to have
25 the same issues that I had in Baltimore, you know, the same

1 death threats, the same situations, guilty by association.

2 I'm being, you know, judged by my past. I can't
3 even start fresh. And I feel like I was doing good. I
4 was -- you know, I had a little apartment. I was collecting
5 my disability. I was just living the normal life.

6 For once in my life out of all the time I've been
7 living, I actually could look over my shoulder and don't have
8 to worry about somebody putting a gun to my head and
9 threatening to kill me.

10 I have to say I'm at a loss of words because this
11 don't seem real. Fifteen years? I mean 15 years is the
12 reason -- it would be a blessing for Your Honor because I
13 knew the guidelines, the 210 to 262. But enough is enough.
14 I mean I lost everything. I don't have nothing to go home
15 to.

16 So when I go home, if my family is still alive, my
17 children are there, I don't have anything to go home to
18 because the little bit that I did accumulate I spent going
19 through this process here. I mean I don't call that like
20 rehabilitation.

21 I've been rehabilitated to myself through books and
22 programs and everything that's offered to me at Allegheny
23 County, CCA.

24 I haven't had any kind of pain management or
25 anything. I've been just dealing with the pain. At times I

1 can't get up. I got sickle cell. Sometimes I can't move my
2 body, but they don't give me any kind of medical treatment.

3 So I ask Your Honor, that if worse come to worse,
4 that no more than 15 years. And hopefully sometime within
5 that time Congress will change, some kind of laws be passed
6 that will be beneficial to my cause and my case.

7 And I ask that you send me to a medical facility
8 where I can get medical treatment for my needs because I
9 haven't -- I didn't get it in Allegheny County. I haven't
10 got it at Northeast Ohio.

11 I just ask that you send me to a facility that can
12 cater to my needs, because the doctors put off the surgery
13 because they thought I might have a chance of going home. So
14 they don't want to go and work on one hip where they need to
15 go back and work on the other one. So they're not trying to
16 touch the right hip until they get the left hip squared away,
17 and it's clear in the medical records.

18 I know the PSI guy, he twisted and contorted the
19 words, but it's clear as day. Like Mercy Hospital, the
20 hospital I been seeing at Youngstown, they don't want to do
21 nothing. I'm still having problems with the left hip, and I
22 don't have a good leg to stand on.

23 And I know it might be a common occurrence to the
24 BOP, but not that I know of because, if that was the case,
25 they would have done the surgery. I need the surgery done on

1 my right hip since I been locked up. They wanted to do it
2 right away; but the doctor said, no, you got to give it a
3 chance to heal.

4 The left hip never healed properly due to my
5 arrest, not the proper rehab. And I just ask that you
6 sentence me -- if you have to sentence me -- which you have
7 to obviously because we here today -- to the mandatory
8 minimum, and send me to a medical facility where I can get
9 the treatment that I deserve and I need, that the Eighth
10 Amendment allows me to, and think about my family, my kids
11 when you making this decision.

12 Think of all the news and all the things that's
13 going on in the world. I'm not a bad person. I don't have a
14 violent past. I feel like my criminal history overrepresents
15 me. But where I come up, where I came up, I feel like I did
16 good, you know, because I'm still alive. And I made it
17 through the trap that was set, and I made a few mistakes, and
18 I owned up to those.

19 And I never took a case to jury trial ever in my
20 life. And I was terrified. But I never touched this gun. I
21 never had it. It was never in my possession. And I contend
22 that. I never had a gun in Baltimore City. I never had a
23 gun here.

24 And that's what I ask Your Honor to consider. I
25 don't know what else -- I think I pretty much addressed

1 everything. And I just ask you for mercy. I'm a God-fearing
2 person.

3 I mean I'm still mad for this whole situation.
4 It's like it's not real. Because I felt like I could have
5 stayed in Baltimore City and got the same result. I feel
6 like I'm the same right now because I left Baltimore to come
7 to Pittsburgh, and I still got the same results.

8 And I tried to change those things, and here I am
9 in front of Your Honor with a gun case. And I don't have
10 that kind of past.

11 Thank you, Your Honor.

12 THE COURT: Thank you, Mr. Warren. Mr. Schorr,
13 anything else you'd like to say at this time?

14 MR. SCHORR: Well, I'd like to ask Your Honor to
15 recommend, number one, that Mr. Warren be placed as close to
16 Baltimore as possible and to a Federal Medical Center. I
17 believe the closest one might be the one at Butner, North
18 Carolina.

19 And I'd asked you at our previous hearing, and I
20 remind you, he was in State custody for some time -- I'm not
21 quite sure how long -- before the Federal charges came up.
22 Several months, and you held the Bureau of Prisons -- that
23 case was dropped. So that time, I'm asking you to tell the
24 Bureau of Prisons or recommend that they credit that toward
25 his Federal sentence.

1 Beyond that, I have nothing else to say, Your
2 Honor.

3 THE COURT: Thank you, Mr. Schorr. At this time
4 we'll turn the floor over to Miss King to hear from her on
5 behalf of the United States.

6 MS. KING: Thank you, Your Honor. The Court here
7 had an opportunity that it does not often have in Federal
8 cases where there was a trial, and the Court had the
9 opportunity to hear from the Government's witnesses, the
10 police officers that were there on the night Mr. Warren was
11 arrested, and had the opportunity to assess their testimony
12 and their believability.

13 As the Court will recall, the officers were at
14 Mr. Warren's residence that night for a completely unrelated
15 incident. There was a person stabbed who basically was dying
16 on the front porch, and they were there assisting that
17 person.

18 And Officer Sywyj, who is here today, was
19 interviewing a witness to that stabbing and looked up and saw
20 Mr. Warren walking toward the front door with an enormous gun
21 in his hand, and that's what he saw. And that's what
22 happened.

23 And so I think it's disingenuous for the Defendant
24 to argue at a sentencing motion and again today that the
25 conduct that was involved that night was some type of

1 innocent conduct where no one was at risk of being harmed.

2 Mr. Warren made statements to Officer Hoyson that
3 he heard his cousin had been stabbed, and he went and got his
4 gun, and, notably, a gun that he bought illegally on the
5 street that had the serial numbers filed off when he bought
6 it.

7 You have to ask yourself what was he going to do
8 with that gun? What were the plans and his intentions with a
9 gun that night? I don't think it was probably to stay inside
10 of his house; and thankfully, the officers were there to stop
11 him from doing whatever he planned to do with that gun.

12 I think that the Court needs to take into
13 consideration those actions that occurred that night, the
14 situation that was presented to the officers and Mr. Warren's
15 decisions that night to go and grab his gun when he heard
16 that a crime of violence had been committed against a person
17 that he described as his cousin.

18 And so while there is a mandatory minimum in this
19 case, it's the Government's position that a guideline
20 sentence is more appropriate in this case --

21 THE COURT: Let me ask you about that, Miss King.
22 One of the -- in the Court's experience, that I recognize is
23 even at this point relatively limited, one of the things I
24 think I've observed is that whether we're talking about the
25 career offender provisions of the advisory guidelines or the

1 armed career criminal provisions of the Federal statute, that
2 the intention in the case of the statute, Congress's
3 intention or, in the case of the guidelines, which are
4 applicable here, the Sentencing Commission's, is that in
5 certain cases where there is a qualifying criminal history,
6 that what would otherwise be the recommended sentence get
7 amplified to recognize that acute criminal history, where
8 it's significant and it's persistent and it's of a limited
9 number of very serious crimes.

10 So both the sentencing guidelines and the statutes
11 say to the Judges sentences should be amplified when there is
12 this certain type of criminal record, which the Court has
13 found, with lots of advice from counsel on both sides, is
14 applicable in Mr. Warren's case.

15 So then the question is how much of an
16 amplification? Because if this were not an armed career
17 criminal case, as I understand it, the maximum sentence would
18 be 120 months.

19 So the amplification occurs. We already have a 50
20 percent amplification because it is an armed career criminal
21 case. And if it were not an armed career criminal case and
22 we were looking just at the guidelines, I think -- and it's
23 obviously not a binding part of the case -- the advisory
24 guideline sentence would have been 130 to 162 months of
25 imprisonment, which then gets adjusted down to 120 months

1 because of what would then be the statutory maximum.

2 What's the perspective of the United States of how
3 much the sentence should be amplified in this case? Because
4 there is no question, what would otherwise be the sentence
5 will be amplified because of Mr. Warren's criminal record and
6 the nature of the offense of conviction here. What are your
7 thoughts in those regards?

8 MS. KING: It's my position that a sentence within
9 the guidelines -- at the low end of the guidelines, 210
10 months would be appropriate in this case, but I think you do
11 have to take into consideration --

12 THE COURT: So that's a 75 percent increase.

13 MS. KING: Okay. I think you have to take into
14 consideration again all of the factors, including all of the
15 sentencing factors. This was a person who had an obliterated
16 serial number, a gun with an obliterated serial number, a
17 person who is prohibited from having a gun from multiple,
18 multiple offenses, including a prior event involving a gun
19 where three people were held up by gunpoint by this
20 Defendants and robbed.

21 THE COURT: So the second of those is an element of
22 the offense of conviction. I understand the point on the
23 obliterated serial number.

24 MS. KING: I think in totality you have to look at
25 all of the factors regardless of whether it's an element or

1 not, Your Honor. You're looking at this individual person
2 and the conduct that's involved here and throughout his
3 criminal history.

4 And so I do think that if the Sentencing Commission
5 had intended for every armed career criminal to receive a
6 15-year sentence and that's it, then that's what they would
7 have done. But they don't.

8 They make other considerations for amplifying the
9 sentences based upon -- I mean the sentence here is
10 particularly driven by his criminal history. Because the
11 minimum criminal history category for an armed career
12 criminal could be a four, and he's not a four. He's a five,
13 and it's my position that he should be a six, in fact, based
14 upon arguments that we have previously had here.

15 And so if he was a six, his guideline range would
16 be even higher. So I think that it is the obligation of the
17 Court to look at all the sentencing factors, and obviously
18 the Court can sentence the Defendant to whatever sentence the
19 Court finds to be appropriate.

20 But it's the Government's position that, taking
21 into consideration the guidelines range, which is determined
22 by the Sentencing Commission, for this particular Defendant
23 in conjunction with all of his factors, that there's no
24 reason to vary from the guideline range here. That's why we
25 think a guideline sentence would be appropriate.

1 THE COURT: And help me understand, Miss King, from
2 the position of the United States, and Mr. Schorr, I'll be
3 asking you a similar question, but it's a bit of a mirror
4 image, why in this case would a sentence of 180 months be
5 insufficient to fulfill the purposes of sentencing?

6 MS. KING: I think in this case looking at the
7 factors of the conduct of this particular Defendant in
8 general, it is significant conduct. I think it's required to
9 be punished by a significant sentence. And I don't believe
10 that there's a reason to vary from the guideline range in
11 this case.

12 THE COURT: And is it the position of the United
13 States that 180 months would not be a significant sentence?
14 Because that's --

15 MS. KING: No. That is clearly a significant
16 sentence, and I would never say that it is not. It is
17 clearly a significant sentence. But I do believe that the
18 appropriate sentence is within the guideline range in this
19 case.

20 THE COURT: Okay. I appreciate that, Miss King.

21 Mr. Schorr, to follow-up on the colloquy that I've
22 had with Miss King, the calculated advisory guideline range,
23 and I recognize, and I do my best to follow the direction of
24 the United States Supreme Court, that for a sentencing Court,
25 a District Court as opposed to a Court of Appeals, there is

1 no presumption of reasonableness of an advisory guideline
2 sentence.

3 So I want to be very clear in asking you this
4 question. I am not starting from a presumption of
5 reasonableness.

6 But as recently as the Molina decision in June of
7 this year, the Supreme Court indicated -- I don't know that
8 they used the phrase starting point, but they indicated that
9 the beginning -- one of the reasons that the accurate
10 calculation numerically of the guideline range is so
11 important is that it is an initial starting point for factors
12 that the Court considers, and it is one of the enumerated
13 factors under 3553(a).

14 The United States has argued both in its papers --
15 it's not something Miss King's just arguing today, but she's
16 added to it in the argument today -- that a sentence that is
17 not within the advisory guidelines would not be sufficient to
18 fulfill the purposes of sentencing.

19 Why do you believe that a sentence above 180 months
20 on behalf of Mr. Warren would be a sentence that's greater
21 than necessary to fulfill the purposes of sentencing for any
22 reason, but, in particular, the matters Miss King's
23 highlighted here in Court today?

24 MR. SCHORR: Well, one of the factors Mr. King --
25 Miss King highlighted was that Mr. Warren used a gun in his

1 previous conviction for armed robbery. He did not. He used
2 a BB gun. And that was in the papers the Government
3 submitted to the Court. Many times -- when we looked at his
4 2002 conviction, he had multiple counts in that indictment,
5 one of which said he had a BB gun.

6 So the Government is mischaracterizing to some
7 extent how severe his actions were at that point. Yes, he
8 had a robbery, and they called it robbery with a dangerous or
9 deadly weapon; but it was a BB gun.

10 So I have not heard of anybody being shot to death
11 with a BB gun. It might happen in some stray, freak
12 situation, but it's not what I would consider to be deadly.

13 THE COURT: In a literal sense.

14 MR. SCHORR: In a literal sense. You get hurt, get
15 stung, you could get shot in the eye. We all know the movie
16 Christmas Story, "You'll shoot your eye out," or whatever the
17 line is, but when you look at Mr. King --

18 THE COURT: Mr. Warren.

19 MR. SCHORR: I don't know why I keep saying that --

20 THE COURT: Because I keep referring to Miss King.

21 MR. SCHORR: Yes. When you look at Mr. Warren, so
22 his other two offenses were for drugs. Now, he would be
23 facing the same guidelines sentence today if he had in the
24 past taken an AK-47 and shoved it into somebody's face and
25 said give me your clothes. I think that was the proceeds of

1 the crime for armed robbery. He took somebody's jacket or
2 jackets or something -- wallets possibly, where he would have
3 had a weapon that was meant to kill people.

4 Or if he had pulled a knife to stab them, you would
5 have the same criminal history here. You would have the same
6 guidelines calculation.

7 And then you would look at him and say, Mr. Warren,
8 you're redeemable. But this guy used a BB gun. So I think
9 you have to factor that into your consideration.

10 Now, the guidelines are advisory only for you. So
11 you can look at the factors of the person's past and
12 determine, well, is this guy really that bad a guy?

13 I mean for the Government to argue that he should
14 get 210 months for a crime -- and he's being punished for his
15 past offenses because he hasn't learned obviously, but
16 because he keeps getting in trouble; but he would be facing
17 the same sentence if he was a serious -- he had a serious
18 deadly weapon, I mean a real deadly weapon in his possession
19 at the time.

20 THE COURT: Would he be facing the same calculation
21 of the advisory guidelines? Whether the United States would
22 make a different argument if he had an AK-47 or a KA-BAR
23 knife or those things is a different thing, but you're
24 correct. The mathematical calculation would be the same.
25 But it's quite possible the United States would be arguing

1 for a sentence somewhere far different within the advisory
2 guidelines.

3 MR. SCHORR: It's possible. They could argue for
4 262 months. But they're telling you they want you to go in
5 that range, of that guideline range.

6 And what I'm saying here is you've got a guy -- he
7 won't get out of prison until he's 46 years old with bad
8 hips -- I mean with a 180-month sentence, he's got about
9 three years in.

10 THE DEFENDANT: Three and a half.

11 MR. SCHORR: Three and a half years in now. He's
12 going to be 46 years old with bad hips, diabetes, mental
13 health problems, sickle cell. So all these factors together
14 I think point more toward a 180-month sentence rather than a
15 210 to 262-month sentence. That's all part of the 3553(a)
16 factors that you have to consider.

17 So to that end, the Government I don't think
18 carries the burden of saying that he should get more than 180
19 months. I mean it's supposed to be sufficient but no greater
20 than necessary.

21 You're basically by putting -- today Mr. Warren is
22 going to lose the rest of his youth when he goes to prison
23 today because he's going to lose 15 more years of his life.
24 The time he's already been in prison, as I said, he'll be in
25 his mid to late forties when he gets out; and as he pointed

1 out, he may not be alive. We don't know.

2 That's a horrifically long sentence, 180 months,
3 and that is sufficient but no greater than necessary to
4 punish a man for the crime here.

5 Now, going to what Miss King told you, obviously I
6 didn't do the trial. Mr. Sindler did. I haven't reviewed
7 the trial transcripts because they're not pertinent to what I
8 had to do.

9 I don't know if Mr. Warren knew at the time of his
10 arrest whether the police were there on the front porch. Who
11 knows? But he knew something violent had happened to a
12 family member. Maybe he was going to defend them.

13 I mean the Government kind of implies that maybe he
14 was going to shoot a police officer. That's not necessarily
15 the case. Maybe he thought my cousin's badly hurt. I got to
16 go see what I can do. We don't know that. And it invites
17 speculation to punish him based on what we don't know. I
18 mean that's wrong on its face.

19 So 180 months is sufficient, Your Honor. That's
20 all you need to do to this man.

21 THE COURT: Thank you, Mr. Schorr. Miss King?
22 I'll give you the final word.

23 MS. KING: Thank you, Your Honor.

24 THE COURT: If you have anything else to say.

25 MS. KING: I do. I want to make it clear that the

1 Government is never suggesting that the Defendant was on his
2 way to shoot a police officer.

3 THE COURT: And I did not draw that inference.

4 MS. KING: Thank you. I would also point out that
5 the reason that the Defendant's guideline range is at 210 to
6 262 months is because he does not get the benefit of three
7 points off for acceptance of responsibility.

8 He's apparently continuing to assert his innocence,
9 which is his right, but those three -- if he had accepted
10 responsibility and had pled guilty and had not gone to trial,
11 his guideline range would be 180 months essentially.

12 And so -- and I think that's something else that
13 the Court should take into consideration, is Mr. Warren has
14 now testified twice under oath on the stand relative to prior
15 convictions saying things that are extremely beneficial to
16 himself.

17 Today he's continued to disavow his responsibility
18 in this case, which we did hear testimony at trial from two
19 officers really separately, one who observed him with a gun
20 and one who interviewed him about it, and both of their
21 stories show that he had a gun that day and was holding a gun
22 that day, which he continues to deny --

23 THE COURT: I think the jury found that beyond a
24 reasonable doubt.

25 MS. KING: Yes, Your Honor. And so it seems though

1 as though -- you know, he's saying he never would have
2 accepted his plea deal for his armed robbery case if this had
3 not happened, and I have to say from personal conversations
4 I've had with people in the State's office in Baltimore, that
5 is not essentially a true statement.

6 Those types of things happened in many criminal
7 cases in Baltimore where, if a person successfully finishes
8 out their probation, then it is possible that they can
9 receive some type of verdict without judgment or their
10 probation -- or their verdict can be vacated after the fact.

11 But in fact, this Defendant violated his probation
12 and continued to commit crimes while he was on probation. So
13 there's no way they told me that that would have ever
14 happened, that his case would have ever been vacated because
15 he continued to violate.

16 So instead of accepting his responsibility for his
17 actions, his past actions and his present actions, he
18 continues to make excuses for them, and I find that to be
19 very concerning. And I think that the Court should consider
20 that in determining what an appropriate sentence is; and
21 that's another reason why we do think that a guideline
22 sentence is appropriate in this case.

23 THE COURT: Thank you, Miss King.

24 I would note that it's 10:25. I would like to take
25 a brief recess. We'll resume approximately 10:35, 10:40,

1 somewhere in that range.

2 So, Deputies, however you want to handle that,
3 that's all up to you. Is Mr. Warren going to stay in the
4 courtroom, or are you going to assist him somewhere else?
5 It's up to you.

6 THE MARSHAL: Your Honor, we'll probably take him
7 back to use the restroom.

8 THE COURT: So Mr. Babik, why don't you recess the
9 court at this point, and then the Marshals can assist
10 Mr. Warren.

11 (A recess was taken at 10:26 a.m.)

12 (10:47 a.m.; in open court, Defendant present:)

13 THE COURT: Miss Rowe, we'll note we're back on the
14 record. The Defendant, Mr. Warren, is present represented by
15 his lawyer, Mr. Schorr. Miss King is present on behalf of
16 the United States. The Probation Officer Waszyn is present
17 also.

18 Mr. Schorr, are there any other matters to come to
19 the Court's attention prior to sentencing?

20 MR. SCHORR: Well, Your Honor, Mr. Warren told me
21 he would like to speak to clarify a couple points on the
22 record. I told him I would ask if we could do so, but I told
23 him to be brief --

24 THE COURT: He absolutely can do so. And
25 Mr. Warren, and then, Mr. Schorr, when Mr. Warren's done,

1 we'll make sure that both Miss King and you have the
2 opportunity to tell the Court anything else you'd like to
3 tell the Court, if there is anything else.

4 Mr. Warren, sir, I'm happy to hear from you again.

5 THE DEFENDANT: I don't mean to be bothersome --

6 THE COURT: You're not bothersome, Mr. Warren.

7 THE DEFENDANT: Those three points that Miss King
8 -- well, the two points Miss King made and the one point my
9 lawyer made. I was in the process of going to trial with the
10 armed robberies. The Judge stopped me in the middle of the
11 trial --

12 THE COURT: Down in Baltimore City?

13 THE DEFENDANT: Yes. In Baltimore City for the
14 armed robberies that led to this situation right now. The
15 Judge made an offer of ten years, seven years suspended,
16 three years jail time, four years probation. He wanted to
17 let me go home that day, but the prosecutor said they wanted
18 jail time.

19 The plea arrangement that was worked out was once I
20 complete my probation, which I successfully completed without
21 committing any more crimes like Miss King stipulated to --

22 THE COURT: What I heard Miss King say is that you
23 violated your probation.

24 THE DEFENDANT: I never violated. That's why --
25 because if it was a violation, you would see it on my

1 criminal history, just like all the other violations of the
2 probation I did -- there's nowhere in the copy that she
3 provided, Your Honor. That's the first point.

4 The armed robberies were never supposed to be on my
5 record. That's the second point. And the third point is
6 that -- well, there's two more points.

7 Mr. Duwane Hayes is no relative to me at all. He's
8 the son of the lady I was renting from, the stabbing
9 victim --

10 THE COURT: The gentleman on the front porch?

11 THE DEFENDANT: On the front porch. He's not
12 related to me at all. I never said that at all, and I
13 advised my lawyer -- because he's not my trial lawyer -- I
14 never possessed a gun. I wasn't going to seek revenge on
15 anything of that nature.

16 And I wanted to clear that up because, as I said,
17 he wasn't my trial lawyer, and I wanted to put that on the
18 record. I never touched the gun. I stand by that, good or
19 bad. Thank you.

20 THE COURT: Okay, Mr. Warren. Thank you, sir. Mr.
21 Schorr, is there anything you'd like to say as a consequence
22 of what Mr. Warren has now told the Court or additionally
23 told the Court or any other reasons?

24 MR. SCHORR: No, Your Honor. I think I'm done for
25 the day.

1 THE COURT: Thank you, Mr. Schorr. Miss King, same
2 opportunity, if there's anything else you'd like to add to
3 the record?

4 MS. KING: No, thank you, Your Honor.

5 THE COURT: Thank you, Miss King. Thank you, Mr.
6 Schorr.

7 The Court has set forth the calculation of the
8 advisory guidelines as the Court has calculated them based on
9 the rulings that it's made regarding the various matters set
10 forth in the presentence report, the positions of the United
11 States and the defense in those regards.

12 The base offense level is 24 under Section
13 2K2.1(a)(2). There's an upward adjustment of four levels
14 under 2K2.1(b)(4)(B). Pursuant to Section 4B1.4(b)(3)(B),
15 the total offense level goes to 33.

16 The Court has calculated the criminal history
17 category at 5, which places the matter in Zone 2 of the
18 sentencing table. The advisory guidelines recommend a term
19 of imprisonment of 210 to 262 months. Probation is not
20 authorized by statute.

21 There's a mandatory minimum term of imprisonment of
22 180 months. The Court must impose a term of supervised
23 release not exceeding five years. The advisory guidelines
24 recommend a fine ranging from \$17,500 to \$175,000.

25 Restitution is not applicable in the case.

1 Forfeiture is of one Taurus Judge .45LC/.410 pistol with a
2 serial number having the last four digits of 4363. There is
3 a special assessment of \$100 applicable to any sentence.

4 Mr. Warren, under the Sentencing Reform Act, there
5 are a broad array of materials that I'm allowed to consider.
6 There's certain factors I'm obligated to consider. These
7 include the nature and circumstances of the offense as set
8 forth in the record in this case, the presentence report and
9 the addendum.

10 I'm also to consider your history and
11 characteristics, as set forth at length in the presentence
12 report and the addendum. This includes, among other things,
13 your family and personal data, physical condition, mental and
14 emotional health, educational and vocational skills and your
15 employment record.

16 I can confirm for the record that I've considered
17 all of the information I'm legally permitted to consider.
18 This includes all of the matters I've set forth earlier in
19 the hearing today, the arguments made by your lawyer and by
20 the lawyer for the United States and your statements to the
21 Court.

22 It's my obligation as the Judge, Mr. Warren, to set
23 a sentence that is sufficient but not greater than necessary
24 to comply with the purposes of sentencing. I'll now briefly
25 review them and state how each of them applies in this case.

1 The first is to reflect the seriousness of the
2 offense. The fact that Congress by law has set a mandatory
3 minimum sentence in this case of 180 months is in the Court's
4 estimation a reflection of the degree to which society
5 considers the offense to be serious.

6 People that have been previously convicted of
7 felonies and have had multiple prior felony convictions
8 simply are not to possess firearms in our society. That is
9 an important and vital law in keeping communities,
10 neighborhoods, households safe. So it is a very, very
11 serious offense, and it is a serious offense that is, as I've
12 used the phrase, amplified by the fact of your prior criminal
13 record.

14 You possessed a firearm. You knew it was one that
15 you could not possess at all. By the fact of the
16 obliteration of the serial numbers, it should have in essence
17 doubled down the degree to which you would have known and
18 should have known you cannot possess that firearm.

19 I recognize in your statements to the Court,
20 Mr. Warren, your position that you did not possess that
21 firearm. I understand your statements here in court today.

22 A jury found beyond a reasonable doubt that you
23 possessed the firearm. And in the Court's estimation there
24 was more than sufficient evidence for them to reach that
25 conclusion. That's the conclusion that's binding on the

1 Court. That's the conclusion that's binding here at
2 sentencing.

3 So by any measure, this is a very serious offense.

4 The second factor the Court's to consider is the
5 necessity of the sentence to promote respect for the law. A
6 review of the presentence report notes that, in addition to
7 the qualifying convictions, that is, the convictions that led
8 to the categorization of this crime, it's the possession of a
9 firearm by an armed career criminal, you had other serious
10 convictions, including one for assault and a different and
11 separate and distinct drug conviction.

12 To your credit, it appears that you left, and the
13 presentence report does reflect that you left Baltimore in
14 order to get a fresh start, to be in a different place, to
15 be, as you've used the phrase, accurately in the Court's
16 estimation, around different people, places and things.

17 But by the same token, it is not simply the
18 qualifying convictions that are present in your criminal
19 record. You had a significant criminal record.

20 The fact of you possessing a firearm, for however
21 long you possessed it, was a separate and distinct criminal
22 offense. But by the same token, you did come to Pittsburgh.
23 You were not charged with, arrested for, other criminal
24 activity.

25 By phrasing it that way, I'm not minimizing your

1 possession of a firearm, but you were not engaged in other
2 criminal activity when you moved here to get away from the
3 situation in Baltimore. So in many ways, Mr. Warren, that
4 sentencing factor has elements to it that cut both ways.

5 The third sentencing factor is to provide just and
6 sound punishment for the offense with which you're convicted.
7 By law I'm required to sentence you to a term of imprisonment
8 of at least 180 months. By any measure, that is a
9 significant punishment by any society on another human being.
10 So the sentence that's imposed here will reflect a just and
11 sound punishment for the offense you have been convicted of.

12 I'm to afford adequate deterrence to further
13 criminal conduct by you and by others in society.

14 I'm not certain what your future is going to carry,
15 Mr. Warren, other than, as Mr. Schorr has accurately pointed
16 out, you're going to be in Federal prison for a long time.

17 As to others in society, as I've noted earlier,
18 Congress, that is, the elected representatives of the people
19 of the United States, along with the President that signed
20 the law, have concluded with reason that convicted felons
21 with long records of serious other felony convictions have to
22 know they cannot possess a firearm. They just can't.

23 And society has set a punishment, has set a
24 sentence that is by any measure significant in order to deter
25 other people from doing what you're convicted of doing here.

1 So I do believe the sentence is intended to reflect
2 a mechanism to both deter you and other people in society
3 from this type of conduct.

4 I'm to consider the application of the now advisory
5 sentencing guidelines, any applicable policy statements and
6 sentencing factors.

7 In this case, the principal reason that the
8 sentencing guidelines were amplified to the degree they are
9 is your status as an armed career criminal. That presents a
10 mandatory minimum sentence of 180 months. The advisory
11 guidelines reflect a term of what is in essence 17 1/2 to
12 more than 20 years, 210 to 262 months.

13 In some significant measure in the Court's mind,
14 there is a meaningful and real overlap between the mandatory
15 minimum sentence and the intention of that mandatory minimum
16 sentence as set forth in the statute that created it and the
17 acceleration, if you will, of the advisory guidelines in your
18 case. It's not a complete overlap, but in the Court's
19 estimation, it is a considerable overlap.

20 I've noted on the record and in the amended
21 tentative findings what your sentence would be but for the
22 application of the armed career criminal enhancements.
23 Whether or not this mandatory -- or the maximum sentence had
24 been 120 months or not, it would have been notably less than
25 the 180 months or anything in that range and certainly

1 notably less than 210 to 262 months.

2 Miss King as the lawyer for the Government is
3 correct that, had you entered a plea of guilty, you would
4 have received a credit of three offense levels, three points,
5 if you will, for acceptance of responsibility.

6 I'm not stating a general rule or rule that I would
7 apply in all cases because I'm not yet certain, but I also am
8 not confident that the guidelines carry the same weight in
9 making that judgment because somebody elects to go to trial.

10 This was a case that was based on eyewitness
11 testimony. The testimony of the police officers was
12 unequivocal. It was not rebutted by other physical evidence
13 at the scene. But it was a trial that turned on credibility,
14 and the jury made a credibility determination. They believed
15 the police officers.

16 And in the Court's estimation, the jury had more
17 than a reasonable basis to believe the police officers. But
18 if there are cases that go to trial, the Court is not
19 surprised that it was this case and this kind of case that
20 went to trial because of the nature of the evidence that was
21 involved here.

22 So while I recognize and don't minimize the
23 accuracy of Miss King's statement in those regards, that's
24 really not a factor that weighs into the Court's assessment
25 of how to consider the advisory guidelines in this case.

1 I'm to consider the types and kinds of sentences
2 that are available. As I've noted, I'm required to sentence
3 you to a term of imprisonment, Mr. Warren. Even if that
4 mandatory minimum sentence was not present here, the Court
5 would conclude that the crime of which you've been convicted
6 does require a long, meaningful term of imprisonment in the
7 custody of the Bureau of Prisons.

8 I would also note apart from -- and I'm not
9 minimizing the appropriateness of the submission from the
10 United States regarding the abilities and capabilities of the
11 Bureau of Prisons, the Court is confident that the Bureau of
12 Prisons in a variety of settings can accommodate your
13 specific needs, medical, emotional, psychological, surgical
14 that would present themselves in a number of settings
15 available to the Bureau of Prisons. So I have considered the
16 types and kinds of sentences that are available.

17 The next factor is to protect the public from the
18 commission of further crimes by you, Mr. Warren. I'm not
19 certain how that would have played out. I did not draw the
20 inference, and I recognize Miss King's confirmation of not
21 intending that I draw the inference. I didn't draw the
22 conclusion that you came down the stairs with the Taurus
23 firearm in order to wound, kill, shoot or do anything to
24 police officers.

25 But where I think the United States is correct in

1 those regards, is when you came down the stairs with that gun
2 into a situation that was already chaotic, where there was
3 already a person gravely injured, it ramps up in any number
4 of ways the risk of a series of bad things happening next.

5 I don't know what your motive was in bringing the
6 gun down, whether it was to protect yourself, to protect your
7 relatives that you lived with, to protect what was going on
8 at the scene or if it was something far more negative than
9 that. But either way, a decision to bring down a gun that
10 you had no legal authority to have, in fact, it was
11 prohibited by law from you having, injected a risk of danger
12 and harm into the situation.

13 That demonstrates to me, Mr. Warren, that
14 notwithstanding the fact that since you've come to Pittsburgh
15 you haven't been involved in other criminal activity other
16 than the possession of this firearm, that risk of danger and
17 the risk of harm is still something that is part of you. So
18 that is a factor that I've considered in the sentencing.

19 I'm to provide any needed educational or vocational
20 training, medical care or other correctional treatment in the
21 most effective manner. I make the recommendations requested
22 by your lawyer, Mr. Schorr, that you be placed as close as
23 possible to Baltimore, Maryland, that you be placed at a
24 suitable federal medical facility.

25 I will make a specific recommendation that it be

1 FMC Butner. It is a wide-ranging, full-service, all-level
2 medical facility of the Bureau of Prisons. It is I suspect
3 of all the Federal Medical Centers reasonably close to
4 Baltimore. I'm not imposing the sentence, but I am imposing
5 an order to get you the medical care, but within the context
6 of the sentence that is being imposed.

7 We'll make those recommendations to the Bureau of
8 Prisons. As I suspect Mr. Schorr has told you, Mr. Warren, I
9 can't order the Bureau of Prisons to do that. But I will
10 make that formal recommendation in writing because it
11 certainly fits the facts of your case.

12 I'm to avoid any undue or unjust disparities in
13 sentencing. I believe the sentence as imposed will do that,
14 particularly in light of the mandatory minimum sentence that
15 is in play in your case.

16 Finally, I do believe I have ruled upon all of the
17 sentencing arguments that have been made by your lawyer on
18 your behalf and made by Miss King on behalf of the United
19 States.

20 It's my fundamental obligation, Mr. Warren, to
21 provide for a sentence that is sufficient but not greater
22 than necessary, which means that I will set a sentence that
23 in the Court's judgment fulfills the purposes of sentencing
24 but then goes no further.

25 Any sentence imposed must and will relate

1 specifically to you, your conduct and situation.

2 As I've noted, there are factors in your life that
3 cut in each direction, Mr. Warren. You had a relatively long
4 period of time back in Pittsburgh. You made the decision to
5 leave Baltimore, which was an environment in which you were
6 committing other crimes.

7 I am not considering as an infirmative factor the
8 choice that you made to go to trial for the reasons I've
9 stated. I have noted you had a gun that you should have
10 known was illegal, both to possess at all and to possess with
11 the obliterated serial number, which reflects the illegality
12 of its possession. You did have a prior record of serious
13 crimes beyond those that were considered for qualifying
14 offenses.

15 By the same token, I know, as Mr. Schorr has stated
16 on the record on your behalf and as reported and detailed in
17 the presentence report, at least the principal -- what I
18 consider the principal qualifying offense, the armed robbery,
19 occurred quite some time ago. It doesn't mean it was not
20 serious. But it also was not with a weapon that was actually
21 capable of killing somebody. But the law for good reason
22 treats it that way in terms of the crime. And your personal
23 history and permanent record is one that presented a lot of
24 challenges to you.

25 By the same token, you've made a lot of bad

1 choices. All told, Mr. Warren, the record that you come to
2 court with in the context of your conviction is one that has
3 matters in it that cut, as I've noted, in each direction.

4 I do specifically find that a sentence within the
5 advisory guideline range would be a sentence that in the
6 specific facts of your case would be a sentence that's
7 greater than necessary to fulfill the purposes of sentencing.

8 I understand the arguments of the United States.
9 I'm not diminishing them. I'm not saying they're not well
10 taken. But to fulfill the purposes of sentencing, sentencing
11 you to federal prison for 17 1/2 to 22 years is not necessary
12 in the Court's estimation to fulfill the purposes of
13 sentencing that I've stated.

14 I do find that a sentence that is amplified above
15 what your sentence would have been without the armed career
16 criminal designation is appropriate, because I think that
17 Congress in passing that statute and making those
18 designations has reflected important societal interest, that
19 society cannot have people with your record possessing guns.
20 They just can't. It poses too great a risk to too many
21 people.

22 Based on all the factors and for the reasons I've
23 stated on the record, Mr. Warren, the sentence of the Court
24 is as follows:

25 You're sentenced to a term of imprisonment in the

1 custody of the United States Bureau of Prisons of 192 months.
2 I will recommend, as I've noted, that you serve that at a
3 Federal Medical Facility for as much of your sentence as that
4 care is necessary and that you be as close to Baltimore,
5 Maryland, as the BOP can place you consistent with your
6 correctional treatment needs. I find you cannot pay a fine,
7 so no fine will be imposed.

8 Restitution is not applicable. The sentencing
9 judgment will include forfeiture of one Taurus Judge
10 .45LC/.410 caliber pistol with serial number ending in the
11 last four digits 4363. There will be a mandatory special
12 assessment of \$100.

13 You will be placed on a term of supervised release
14 of five years applicable upon your release from Federal
15 prison. In a moment, Mr. Warren, I'm going to go over the
16 rules and conditions that apply to that.

17 I will advise you that, should you violate any of
18 the rules or conditions of supervised release, I could be
19 asked to revoke your supervised release. If that happened,
20 Mr. Warren, you could be sent back to Federal prison, and you
21 would not receive credit for time that you had already served
22 on supervised release.

23 You're going to have to report to the probation
24 office in the district to which you're released within 72
25 hours of being released from the custody of the Bureau of

1 Prisons.

2 While on supervised release, Mr. Warren, you cannot
3 commit, shall not commit any Federal, State or local crime.
4 You have to abide by all of the standard conditions of
5 supervision recommended by the Sentencing Commission and
6 adopted by the Court.

7 I'll highlight the following, Mr. Warren:

8 You cannot illegally possess a controlled
9 substance.

10 You shall not possess a firearm, ammunition,
11 destructive device or any other dangerous weapon.

12 You're going to have to participate in any mental
13 health assessment or treatment programs directed by the
14 probation office until released from them by the Court.

15 You may be required to contribute to the costs of
16 services provided in an amount not exceeding the actual cost.
17 And the probation office will be authorized to release your
18 presentence report to any treatment provider, if requested.

19 Given the specific nature of the offense of
20 conviction in your case, Mr. Warren, you have to submit your
21 person, property, house, residence, vehicle, papers, business
22 or place of employment to a search conducted by the probation
23 office at any reasonable time and in any reasonable manner
24 based on a reasonable suspicion of the presence of contraband
25 or evidence of a violation of a condition of supervision.

1 Your failure to submit to such a search could be grounds in
2 and of itself for revocation.

3 You have to tell anybody else that is present at
4 those premises that those locations could be subject to a
5 search.

6 You will be required to participate in an alcohol
7 aftercare program as directed by the probation office, which
8 may include alcohol testing. You cannot consume alcohol
9 while you're on supervised release, given your record as
10 reported in the presentence report. You may be required to
11 contribute to the cost of those services in an amount not
12 exceeding the actual cost.

13 You will be required to participate in a program of
14 testing, evaluation and, if necessary, treatment for
15 substance abuse, as may be directed by the probation office
16 until you would be released from such a program by the Court.
17 You may be required to contribute to the costs of services in
18 an amount not exceeding the actual cost.

19 This will include random drug testing with at least
20 one test within 15 days of going on supervision and at least
21 two tests thereafter. You cannot intentionally purchase,
22 possess or use any substance or device designed to affect or
23 alter in any way that testing protocol.

24 You have to cooperate in the collection of DNA as
25 directed by the probation office.

1 As I've noted, Mr. Warren, no fine will be imposed
2 because you cannot pay a fine. And there is a special
3 assessment of \$100.

4 I find that the sentence as imposed fulfills each
5 of the purposes of sentencing, as I've stated them on the
6 record for each of the reasons I've stated.

7 Mr. Waszyn, is there anything about the Court's
8 oral pronouncement of sentence that you as the probation
9 officer believe needs to be amended, corrected or modified in
10 to any way?

11 MR. WASZYN: No, Your Honor.

12 THE COURT: Thank you, Mr. Waszyn. Miss King, does
13 the United States have any objection to the reasonableness of
14 the sentence as imposed?

15 MS. KING: No, Your Honor.

16 THE COURT: Mr. Schorr, same question of you?

17 MR. SCHORR: Well, I think 180 months would have
18 been more than sufficient, Your Honor. So I'm not quite sure
19 how you got the 192, but that's within your discretion.

20 THE COURT: Okay.

21 MR. SCHORR: I mean I don't think it's reasonable,
22 but I mean I said before --

23 THE COURT: Well, more precisely, it's a procedural
24 reasonableness, and I believe you've preserved all your
25 objections to the calculation of the now advisory guideline

1 range and the application of the armed career criminal
2 enhancement at all in this case. So those are preserved.

3 Is there anything else that I should hear now based
4 on our Third Circuit's decisions and the Supreme Court's
5 decisions?

6 MR. SCHORR: No, Your Honor.

7 THE COURT: Okay. Thank you, Mr. Schorr. Are
8 there any other recommendations that you want to make that
9 you're asking me to make to the Bureau of Prisons on
10 Mr. Warren's behalf other than the ones you've stated?

11 As to the calculation of time in custody and credit
12 towards his sentence, my understanding is that that's not
13 something I can even influence by recommendation to the
14 Bureau of Prisons.

15 It's always my belief, and I'll be happy to state
16 it in the sentencing judgment, that Mr. Warren should receive
17 credit for any time served to the fullest extent of the law.
18 But that's a calculation that the Bureau of Prisons makes.

19 MR. SCHORR: I understand that. Perhaps to that
20 end, if you put in the judgment of conviction that he had
21 originally been arrested by the City police and held in State
22 custody, and that case was dismissed after he was charged
23 Federally. So that they are aware that there is a period of
24 time when he was in custody, I believe it was five months. I
25 understand they make the determination, but they want to be

1 satisfied from what I understand in previous cases that
2 nobody else has used that time.

3 THE COURT: Right.

4 MR. SCHORR: And that's the key. I want --
5 whatever you can put in the record that that time has not
6 been used.

7 THE COURT: Is that in the presentence report,
8 Mr. Waszyn?

9 MR. WASZYN: It is, Your Honor. It's clearly
10 stated.

11 THE COURT: Okay. I will note that in the
12 sentencing judgment. I'll highlight that, that the Bureau of
13 Prisons should consider that as reported in the presentence
14 report. And then they'll take a look at that.

15 MR. SCHORR: And in the presentence report, there's
16 mention made of Mr. Warren's mental health issues, possible
17 mental health issues. I've spoken with the Bureau of
18 Prisons, and they told me that the sentence or two that was
19 involved there was sufficient; but can you recommend that
20 they take a look at his psychological needs? I would
21 appreciate that.

22 THE COURT: I would add that as part of the
23 recommendation, as to the recommendation at FMC Butner.

24 In light of that, I will add a condition to the
25 supervised release that, when Mr. Warren is released, the

1 probation office determines whether -- it actually is in
2 their condition number three, the mental health assessment.
3 So I will add that, Mr. Schorr, to the recommendations to the
4 Bureau of Prisons.

5 Miss King, does the United States have any
6 objection to any of the recommendations to the Bureau of
7 Prisons as articulated by Mr. Schorr?

8 MS. KING: No, Your Honor.

9 THE COURT: All right. They'll be made in the
10 sentencing judgment, Mr. Schorr.

11 MR. SCHORR: Thank you.

12 THE COURT: I will confirm for the record that I
13 believe the 192-month sentence I believe did a number of
14 things to reflected the totality of Mr. Warren's life as
15 reported in the presentence report, his prior criminal
16 record, the nature and circumstances of those offenses.

17 It gave due and fair consideration to the
18 calculated advisory guideline range and measured each of
19 those factors against the benchmark of a sentence that is
20 sufficient but not greater than necessary to fulfill the
21 purposes of sentencing.

22 Mr. Warren, I advise you of your appeal rights as
23 follows, sir. You have the right to appeal from each and
24 every one of the Orders of the Court, the judgment of guilt,
25 and the sentence that's been imposed by the Court.

1 So you do have those rights, Mr. Warren. You have
2 the right to be represented by a lawyer in any appeal. If
3 you cannot afford a lawyer, one will be appointed for you at
4 no cost to you. Do you understand that, sir?

5 THE DEFENDANT: Yes.

6 THE COURT: Mr. Warren, if you cannot afford
7 certified copies of any necessary court records, they will be
8 provided to you at the expense of the Federal Government. Do
9 you understand that, sir?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: Mr. Warren, I advise you that should
12 you not be able to afford the filing fee for an appeal, the
13 Court would enter an Order that waives your obligation to pay
14 an appellate filing fee. Do you understand that, sir?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: Mr. Warren, I advise you that if you do
17 want to appeal, you must do so, that is, appeal within 14
18 days of today. If you do not appeal within 14 days of today,
19 you would lose your rights to an appeal. Do you understand
20 that, sir?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: Mr. Warren, I advise you that if you
23 would request, that the Clerk of our Court here in Pittsburgh
24 would prepare and file a notice of appeal on your behalf. Do
25 you understand that, sir?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: Mr. Schorr, are there any other matters
3 that you believe we should take up today or that you'd like
4 to bring to the Court's attention on Mr. Warren's behalf?

5 MR. SCHORR: No, Your Honor.

6 THE COURT: Thank you, Mr. Schorr.

7 Miss King, are there any other matters the United
8 States believes we should take up today or that you would
9 like the Court to pay attention to at this time?

10 MS. KING: No, thank you, Your Honor.

11 THE COURT: Thank you, Miss King.

12 Mr. Waszyn, sir, are there any other matters that
13 the probation office believes the Court needs to address
14 during this sentencing hearing?

15 MR. WASZYN: No, Your Honor.

16 THE COURT: Thank you, Mr. Waszyn. In a moment
17 we'll adjourn court. I'd ask those present in the courtroom
18 to remain seated and at ease while the deputies assist
19 Mr. Warren.

20 (Proceedings were concluded at 11:19 a.m.)

21 - - -

22 C E R T I F I C A T E

23 I, Deborah Rowe, certify that the foregoing is
24 a correct transcript from the record of proceedings in the
above-titled matter.

25 S/Deborah Rowe _____
Certified Realtime Reporter